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DOC #:

DATE FILED: 10/12/2023

MEMORANDUM ENDORSEMENTPalisades Estates EOM, LLC et al v. County of Rockland, New York et al, 23-cv-4215 (NSR)

The Court is in receipt of several letters from the parties regarding supplemental briefing. (*See* ECF Nos. 314–19.) Although the Court has previously granted several Defendants' respective requests to submit additional, individualized arguments (*see* ECF Nos. 295, 310, 311, 313), several additional Defendants now respectively request their own opportunities to submit such arguments. In addition to the hundreds of pages of briefing Plaintiffs must respond to (and which the Court must review), Defendants' new requests may add hundreds more. The Court appreciates Defendants' attempts to streamline their arguments and advance their respective clients' positions. The form of presentation for Defendants' additional arguments, however, has become unworkable.

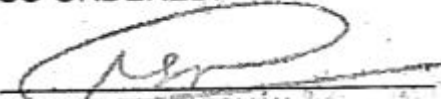
Given the prospect of such voluminous supplemental briefing, the Court directs the parties (including those for whom the Court has already granted leave to file supplemental briefing) to meet and confer to proffer a joint proposal regarding the form of presentation for Defendants' respective additional arguments. The parties are directed to file a letter presenting this proposal no later than October 16, 2023.

Any proposal must eliminate duplicative legal arguments, streamline shared legal standards, reduce the total number of pages as much as practicable, and consolidate all additional arguments into one document for ease of reference. Moreover, any proposal must enable the parties to adhere to the present briefing schedule, adopted by the Court at ECF No. 309. **The Court will not entertain any further extensions of the briefing schedule.**

DATED: October 12, 2023

White Plains, NY

SO ORDERED:


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE



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October 11, 2023

VIA ECF

Hon. Nelson S. Román, U.S.D.J.
Charles L. Briant Jr. Federal Building and Courthouse
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White Plains, New York 10601

EDWARD J. PHILLIPS
Principal Member
ephillips@kblaw.com
Also Admitted in CT

Re: *Palisades Estates EOM LLC, et al. v. County of Rockland, et al.*
23 Civ. 4215 (NSR)

Dear Judge Román:

Our firm represents Defendants Town of Orangetown and Town Supervisor Teresa M. Kenny, who is named in her official capacity only, in the above-referenced action (“Orangetown”). We write to request permission to file a separate brief in support of Orangetown’s motion to dismiss the Second Amended Complaint. The brief would focus principally upon *Younger* abstention, which requires a fact-specific analysis.

We are actively conferring with counsel for the other Town Defendants to find efficiencies insofar as briefing common issues, including with respect to *Younger* abstention. The Towns of Salina, Poughkeepsie, and Newburgh have already requested and received permission to file separate briefs. The instant request is intended to facilitate our coordination with these other Town Defendants with respect to joint briefing, but to also provide the flexibility to present legal arguments unique to Orangetown to the extent necessary.

Respectfully submitted,

/s/ Edward J. Phillips

Edward J. Phillips

cc: All counsel of record
(via ECF)



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October 11, 2023

VIA ECF

Hon. Nelson S. Román
United States District Court, Southern District of New York
300 Quarropas Street
White Plains, NY 10601

**Re: *Palisades Estates EOM, LLC et al. v. County of Rockland, New York, et al.*,
Index No. 7:23-cv-04215-NSR**

Dear Judge Román:

We are counsel to Plaintiffs. We write to respectfully oppose Defendant Town of Orangetown's request to submit a supplemental brief in support of Defendants' motion to dismiss the Second Amended Complaint (ECF No. 314). Defendants' requests seeking further supplemental briefing shall cause Plaintiffs substantial prejudice and are inequitable.

On June 7, 2023 -- over 4 months ago -- Town of Orangetown first wrote this Court seeking to make a motion to dismiss. On July 13, 2023, this Court ordered all Defendants seeking leave to move to dismiss to submit a consolidated brief limited to 75 pages, and ordered that any Defendant which required additional pages to file "additional arguments unique to them" must seek leave in writing to do so. (ECF No. 199). On September 1, 2023, this Court made the same order regarding Defendants' opposition to Plaintiffs' motion for a preliminary injunction and Defendants' motion to sever and transfer. (ECF No. 295). Accordingly, Defendants will have had over four months from when they first sought leave to move to dismiss until their October 23, 2023 deadline to do so.

So far, across the three motions pending in this action, Defendants have requested and received permission to file nine supplemental briefs, totaling up to an additional 225 pages of briefing **beyond the three consolidated 75-page briefs ordered by this Court.**¹ Any further supplemental briefing would cause Plaintiffs substantial prejudice, be inequitable and undermine

¹ Town of Orangetown's letter requesting permission to submit a supplemental brief states that "[t]he Towns of Salina, Poughkeepsie, and Newburgh have already requested and received permission to file separate briefs." (ECF No. 314). It is Plaintiffs' understanding that the Towns of Salina, Poughkeepsie and Newburgh have requested and received permission to file separate briefs in opposition to Plaintiffs' motion for a preliminary injunction, whereas Town of Orangetown is now requesting permission to file a supplemental brief in support of Defendants' motion to dismiss the Second Amended Complaint.



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the purpose of consolidated briefing. Plaintiffs shall suffer prejudice with such an overwhelming amount of pages to which they must respond in short order.

Town of Orangetown's letter requesting permission to submit a supplemental brief explains that its proposed supplemental brief "would focus principally upon *Younger* abstention, which requires a fact-specific analysis." (ECF No. 314). The issue of *Younger* abstention is not an argument unique to Orangetown. Defendants foreshadowed in their pre-motion letters seeking leave to file a motion to dismiss – including those submitted by Orangetown, dated June 7, 2023 (ECF No. 114), Niagara County, dated June 13, 2023 (ECF No. 136), Onondaga County, dated June 14, 2023 (ECF No. 148), St. Lawrence County, dated June 15, 2023 (ECF No. 164), Saratoga County, dated June 15, 2023 (ECF No. 165), Sullivan County, dated June 16, 2023 (ECF No. 168), Oneida County, dated June 16, 2023 (ECF No. 170), and Rockland and Orange Counties, dated June 16, 2023 (ECF No. 174) – that abstention will be a central argument in Defendants' motion at large. This is not new or unique. While any legal argument requires some degree of factual application, the Town of Orangetown has failed to articulate any rationale justifying the necessity of submitting a supplemental brief in excess of the 75 pages which this Court already graciously granted.

Accordingly, Plaintiffs respectfully request that this Court deny Town of Orangetown's request to submit a supplemental brief in support of Defendants' motion to dismiss the Second Amended Complaint. We thank the Court for its attention to this matter.

Respectfully submitted,

Perry M. Amsellem

Perry M. Amsellem

CC: All counsel (via ECF)



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October 12, 2023

Via ECF

Honorable Nelson S. Román
United States District Court
300 Quarropas St.
White Plains, New York 10601

Re: *Palisades Estates EOM, LLC, et al. v. County of
Rockland, et al.*
Docket No. 23 Civ. 4215 (NSR)

Dear Judge Román:

We represent the Counties of Rensselaer, Herkimer, Genesee, Orleans, Greene, Chautauqua, Fulton, Oswego, Otsego, Schoharie, Tioga, Wyoming, Dutchess, and the Town of Poughkeepsie in this matter. In accordance with Your Honor's July 13, 2023 and September 1, 2023 Orders (ECF Nos. 199, 295), we respectfully request leave to file supplemental memoranda of law (no longer than 25 pages) in support of motions to dismiss and motions to sever and transfer venue.

Plaintiffs' 104-page pleading asserts seven causes of action against the above-mentioned governmental entities. While we are actively working with co-defendants' counsel to prepare comprehensive joint memoranda of law, we require these additional pages to address factual and legal issues specific to the various municipal entities that we represent.

Thank you for your consideration of this request.

Very truly yours,

SOKOLOFF STERN LLP

A handwritten signature in dark ink that reads "Chelsea Weisbord". The signature is fluid and cursive, with the first name "Chelsea" written in a larger, more prominent script than the last name "Weisbord".

Chelsea Weisbord

cc: All counsel via ECF



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October 12, 2023

VIA ECF

Hon. Nelson S. Román, U.S.D.J.
Charles L. Brieant Jr. Federal Building and Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: *Palisades Estates EOM LLC, et al. v. County of Rockland, et al.*
23 Civ. 4215 (NSR)

Dear Judge Román:

We write in response to the letter to the Court from Plaintiffs' counsel yesterday opposing our request for permission to file a separate brief on behalf of Defendant Town of Orangetown.

Plaintiffs' concern about being required to respond to an “overwhelming” number of pages in the upcoming motion practice is misplaced for at least two reasons. First, Plaintiffs themselves defined the scope of this litigation when they chose to name 31 different municipal defendants from around New York State. Indeed, Plaintiffs have named municipal defendants in each of the four federal districts in New York, spanning from Suffolk County on Long Island to Niagara County on the Canadian border. The municipal defendants include both towns and counties, with the only clear connection between them being their respective responses to the City of New York's so-called “Decompression Strategy” of attempting to establish long-term housing shelters for asylum refugees around the state with little-to-no notice to local municipal officials.

In short, to the extent that Plaintiffs' blunderbuss pleading creates staffing and logistical challenges for opposing counsel, Plaintiffs themselves have created those challenges. Fortunately for them, with no fewer than nine (9) Pryor Cashman LLP attorneys having appeared in this action, they also appear capable of meeting them.

Second, opposing counsel misconstrues Orangetown's application and defense counsel's ongoing efforts to streamline the upcoming submissions, but while allowing for separate briefing. Defense counsel has been meeting and communicating regularly to coordinate the consolidated briefing that the Court has required. We will continue those efforts. However, each of us has a client to represent, and the arguments we wish to raise and/or prioritize do not perfectly align. Our request on behalf of the Town of Orangetown is not intended to simply pile an additional 25-page brief upon the upcoming motion papers, as Plaintiffs suggest, but rather to afford us the flexibility of submitting a separate



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brief in the event we cannot adequately present the Town's position in a consolidated brief.

With respect to *Younger* abstention, we believe that the Town's investigation of zoning violations at the Armoni Hotel, which led to the commencement of a state court enforcement action and a preliminary injunction being issued by the Rockland County Supreme Court, requires a more thorough examination than may prove feasible in a consolidated brief that must also address multiple other points. To the extent we can streamline our briefing and/or consolidate our submission on behalf of Orangetown with other Town Defendants, we certainly will.

We therefore submit that our request for permission to file a separate brief should be granted in all respects.

Respectfully submitted,

/s/ Edward J. Phillips

Edward J. Phillips

cc: All counsel of record
(via ECF)



October 12, 2023

Via PACER

Hon. Nelson S. Román, U.S.D.J.
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Re: Palisades Estates EOM, LLC, et al. v. County of Rockland, et al.
Civil Case No.: 7:23-cv-04215
KSLN File Nos.: TRI 45359, COO 45022

Your Honor:

On behalf of defendants TOWN OF SALINA ("Town of Salina") and COUNTY OF ONEIDA ("Oneida County"), please accept this letter as a request for permission to file supplemental papers (in addition to the defendants' joint submission) in support of their respective FRCP Rule 12 motions to dismiss. The reasons supporting this request are thoroughly set forth in their co-defendants' similar letter requests¹ and are adopted by reference as it set forth fully herein. Although I am uncertain at this time how much additional briefing would be required, it would certainly be within the twenty-five (25) page limit that has been allotted to the other defendants that have made similar requests.

I make this request in good faith and in accordance with your rules. Thank you in advance for your consideration of this request, and should Your Honor require anything further, please do not hesitate to contact me.

Respectfully,

KENNEY SHELTON LIPTAK NOWAK LLP

A handwritten signature in blue ink, appearing to read "DKC".

Daniel K. Cartwright, Esq.
dkcartwright@kslnlaw.com

DKC/

cc (via PACER): all parties

¹ See e.g., ECF Dkt. Nos. 314, 316, 317.



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October 12, 2023

VIA ECF

Hon. Nelson S. Román
United States District Court, Southern District of New York
300 Quarropas Street
White Plains, NY 10601

**Re: *Palisades Estates EOM, LLC, et al. v. County of Rockland, New York, et al.*,
Index No. 7:23-cv-04215-NSR**

Dear Judge Román:

As Your Honor knows, we are counsel to Plaintiffs. We write to respectfully oppose the 12th hour request by the Counties of Rensselaer, Herkimer, Genesee, Orleans, Greene, Chautauqua, Fulton, Oswego, Otsego, Schoharie, Tioga, Wyoming, Dutchess and the Town of Poughkeepsie (ECF No. 316), as well as the request by the Town of Salina and the County of Oneida (ECF No. 318) (collectively, the “Requesting Defendants”) to submit further supplemental briefing in support of Defendants’ consolidated motion to dismiss the Second Amended Complaint. Requesting Defendants’ requests reinforce why Plaintiffs’ letter submitted yesterday (ECF No. 315) should be granted: Defendants’ requests for such extensive supplemental briefing shall cause Plaintiffs substantial prejudice, are inequitable, and may be addressed at oral argument, as Your Honor did in the related case of *Deide v. Day* (23-cv-3954).

Thus, Plaintiffs proffer an alternative solution. When Your Honor heard argument in the related case of *Deide* on Plaintiffs’ motion for a preliminary injunction (23-cv-3954), Your Honor determined at oral argument that you wanted additional briefing and so-ordered additional briefing on abstention, as Your Honor deemed necessary. There is no reason Your Honor’s approach in *Deide* should not be adopted here.

The Parties collectively agreed to a negotiated and tight briefing schedule via my letter to Your Honor dated September 28, 2023 (ECF No. 307) which Your Honor memo-endorsed on October 5, 2023 (ECF No. 309). Now, only *after* that negotiated briefing has been put in place and so-ordered by Your Honor, Defendants come seeking yet more supplemental briefing, knowing full well that such a grant shall cause Plaintiffs substantial prejudice and shall further delay these proceedings. Any further briefing would add onto the already-approved 225 pages of supplemental briefing **beyond the three consolidated 75-page briefs ordered by this Court** for the three motions currently pending in this action; moreover, granting Defendants’ requests would open the



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door for still additional defendants to request supplemental briefing.¹ As we indicated in our letter yesterday, Plaintiffs shall suffer prejudice with such an overwhelming amount of pages to which they must respond in short order. (*See* ECF No. 315).

Requesting Defendants' letters do not articulate any arguments unique to them which require supplemental briefing to address – rather, they merely make the conclusory statement that Requesting Defendants “require these additional pages to address factual and legal issues specific to the various municipal entities.” (*See* ECF No. 316). This Court graciously provided the parties with 75 pages to make their arguments as to the issues relevant to each pending motion. Each Defendant cannot now receive the opportunity to submit a supplemental brief without making a showing that there are important issues of law and fact which are legitimately specific to a particular defendant and cannot be addressed in the 75 pages which the parties have already been allotted.

Defendants seek nothing more than to prejudice Plaintiffs, after we have agreed upon a briefing schedule. Accordingly, Plaintiffs respectfully request that Your Honor deny Requesting Defendants' request to submit supplemental briefing in support of Defendants' motion to dismiss the Second Amended Complaint; and to the extent Your Honor determines that the Court needs additional briefing, Your Honor of course shall Order such at oral argument, as Your Honor did in *Deide*.

We thank the Court for its attention to this matter.

Respectfully submitted,

Perry M. Amsellem

Perry M. Amsellem

CC: All counsel (via ECF)

¹ Plaintiffs note that Defendant Town of Orangetown's request to submit a supplemental brief in support of Defendants' motion to dismiss the Second Amended Complaint (ECF No. 315), if granted, would add yet another 25 pages to the total briefing figures. Moreover, Orangetown's reply of today, October 12 2023 (ECF No. 317) fails to give this Court any basis to grant their request but simply appears to be an *ad hominem* attack on Plaintiff's counsel.